



Control Number: 38275



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OPEN MEETING COVER SHEET

MEETING DATE: February 3, 2011
DATE DELIVERED: January 25, 2011
AGENDA ITEM NO.: 8
CAPTION: Docket No. 38275; SOAH Docket No. 473-11-1920 - Filing of Luminant Generation Company, LLC to Establish Date to Transfer Electric Service in Compliance with Docket No. 30037
ACTION REQUESTED: Discussion and possible action with respect to Draft Preliminary Order

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Executive Director



Public Utility Commission of Texas

TO: Chairman Barry T. Smitherman
Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.

All Parties of Record

FROM: Heidi Jackson^{HJ} and Mark Hovenkamp

RE: Draft Preliminary Order, Docket No. 38275 – SOAH Docket No. 473-11-1920
Filing of Luminant Generation Company LLC to Establish Date to Transfer
Electric Service in Compliance with Docket No. 30037

DATE: January 25, 2011

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the February 3, 2011 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the February 3, 2011 open meeting.

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SOAH DOCKET NO. 473-11-1920
PUC DOCKET NO. 38275

FILING OF LUMINANT GENERATION	§	PUBLIC UTILITY COMMISSION
COMPANY LLC TO ESTABLISH DATE	§	
TO TRANSFER ELECTRIC SERVICE IN	§	OF TEXAS
COMPLIANCE WITH DOCKET NO.	§	
30037	§	

DRAFT PRELIMINARY ORDER

On September 17, 2010 and September 22, 2010, Rusk County Electric Cooperative, Inc. (Rusk) filed a request with the Public Utility Commission of Texas for enforcement of the Commission's order on rehearing in Docket No. 30037.¹ The Commission found that Luminant Generation Company LLC (Luminant Generation) is in violation of PURA² § 31.002(10) when it provides electric service to Luminant Mining and ordered Luminant Generation to file within 30 days of the date of the order a detailed plan describing the manner and timing of transferring the retail electric service for the Beckville-Tatum mining load over to Rusk. The instant docket was established for the filing of this plan and the eventual termination of the Rusk complaint proceedings.

On December 21, 2010, the Commission issued an order referring this case to the State Office of Administrative Hearings (SOAH), requesting the assignment of a SOAH administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, ordering Luminant Generation and Rusk to file lists of issues to be addressed in this docket, and permitting other parties to file lists of issues to be addressed in this docket. On January 13, 2011, Luminant Generation and Rusk jointly filed responses to the order of referral, identifying issues to be addressed.

¹ *Complaint of Rusk County Electric Cooperative, Inc. Against TXU Electric Delivery Company and TXU Power*, Docket No. 30037, Order on Rehearing (May 19, 2010).

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp 2009) (PURA).

I. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.³ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. What is the physical manner (e.g., facilities required and manner of interconnection) by which retail electric service will be provided by Rusk to Luminant Mining for the Beckville-Tatum mining load, including the respective responsibilities of Rusk and Luminant Generation for affecting the transfer?
2. What is the appropriate timeline for the transfer, including a date certain for the transfer of retail electric service for the Beckville-Tatum mining load from Luminant Generation to Rusk?

II. Issues Not to be Addressed

The Commission takes the position that the following issue need not be addressed in this proceeding for the reasons stated.

1. What is the provision and sourcing of electrical service to be provided by Rusk to Luminant Mining for the Beckville-Tatum mining load?

The Commission has determined the issues that must be addressed in this proceeding are the manner in which Rusk will physically connect to the mining load for the purpose of providing electric service, and the timeframe and date certain for when the actual transfer of electric service to the mining load cuts over from Luminant Generation to Rusk. The provision and sourcing of electrical service to be provided by Rusk is irrelevant to these issues.

³ TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000).

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

III. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of January, 2011

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER